



City of Kenora
Planning Advisory Committee
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Kenora, Ontario P9N 4M9
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MINUTES
CITY OF KENORA COMMITTEE OF ADJUSTMENT &
PLANNING ADVISORY COMMITTEE
SPECIAL MEETING HELD IN THE OPERATIONS CENTRE
60 FOURTEENTH ST. N., KENORA
August 25, 2011
3:00 P.M.

Present:

James Tkachyk	Chair
Wayne Gauld	Vice Chair
Terry Tresoor	Member
Ted Couch	Member (arrived at 3:45 p.m.)
Wendy Cuthbert	Member
Tara Rickaby	Secretary-Treasurer
Patti McLaughlin	Minute Taker

Regrets: Vince Cianci

DELEGATION: None requested

(i) Call meeting to order

Mr. Tkachyk called the August 25, 2011 meeting of the Kenora Planning Advisory Committee to order at 3:00 p.m.

Mr. Tkachyk reviewed meeting protocol for those in attendance.

(ii) Declaration of Interest

Mr. Tkachyk called for declarations of conflict of interest – at this meeting or a meeting at which a member was not present. None

(iii) Correspondence relating to applications before the Committee

- August 22, 2011 - Melvin S. Rapinda, 17 Winnipeg River Drive in support of the creation of the new lot and request for notification of decision.

The Secretary-Treasurer added that Mr. Rapinda was a neighbour to the proposed new lot.

- Ministry of Transportation and The Ministry of Natural Resources – both to be addressed during the discussion of S02/11 Loughheed.

(iv) Consideration of Applications for Minor Variance**1. A07/11 Tutura Application to reduce lot frontage and lot size in conjunction with Application for Consent B11/11**

Present for the meeting: Shane Pearce, Agent for the property owner John Tutura.

Shane Pearce, acting Agent and Counsel for John Tutura, began his presentation with his interpretation of the legislated intent of the Planning Act stating that its intent was never meant to prevent the sale of a parcel of land when there are no real development concerns on the subject property. These two (2) parcels were at one time, stand alone parcels with separate pins and are now merged due to an error. He explained that if Mr. Tutura held one parcel in his name and his wife held the other parcel in her name the Planning Act would not apply but that what has happened and this case is a technical merge. Mr. Tutura held title to both parcels and they merged. The legislated intent of the Planning Act is not to prevent the correction of error. He commented that the applications should be granted approval because they meet the four tests: 1) each lot, the one to be severed and the one to be retained, are the same size it would be inappropriate to deny on that basis as the others that abut the properties are similar in size, 2) the request is minor in nature and is consistent with the Official Plan and Zoning By-law as the lot is not a new lot; it is an existing lot that merged and there will be no increase in density, 3) no issues in contravention of Official Plan ie. bald eagles or natural habitat concerns, 4) The private road should be deemed a public road as there was an expenditure of public money spent on signage. The easement for access is registered as owned by tenants in common so there will always be access.

Shane Pearce at this point in his presentation stated that it would be unfair to turn this application down over an error when case law shows a similar variance had been granted by the OMB.

That Secretary-Treasurer commented that all roads have to be named for 911 purposes and that the Roads Department has indicated that it was unlikely that Winnipeg Drive would be assumed by the municipality. The private road is a dead end road. The driveway providing access to the retained lot appears to cross the new lot and would require a registered easement, if assumed, which could reduce the building area of the lot. Another issue with the application is the current building encroaches on the City owned shore allowance. With respect to meeting the four tests of a variance; if there is failure of even one test then the application fails and in this case the Planning Department's opinion is that it fails to meet the intent of the City of Kenora Official Plan and Zoning By-law for lot size, protection of water, shores and shoreline and development on a private road.

Shane Pearce explained that he feels Section 8.10.5 of the Official Plan has been met with respect to this application and that provisional consent should be granted as the minor variance is minor as the OMB has approved lot frontage reduction for lots that are similar to neighbourhood lot size. He reiterated that to impose a decision to reject the Application when an error was made and neighbouring lots exist is not fair.

Comments from other Departments and Agencies

- The Building Department and Kenora Fire & Emergency Services had no comment.
- MNR had no issue with one eagle nest but in the future if others appear they would have to be considered.
- Heritage Kenora had no objection.
- The Roads Department noted that there is no public access to the property that is being severed off and the existing parcel is presently accessed by a private road.

- Ontario Power Generation regarding the Shoreline Road Allowance (RA) to be transferred to the adjoining property owner: requires a Legal Survey of the RA to be transferred, Transfer of the Easement to OPG from the City of Kenora followed by the sale of the RA (or parts of it) to the adjoining owner.

Mr. Tkachyk asked the Committee for comment.

Wayne Gauld, with respect to OPG's concern regarding flooding rights, requested that the Committee make it a condition, if consent is granted, that the purchased shore allowance has an easement flooding particular to that piece of property. Discussion ensued regarding the road access to the property and whether it was located within the surveyed Part 5, Winnipeg River Drive, or over private property.

Shane Pearce confirmed that there is an easement registered on title for all who share the road. The Secretary-Treasurer observed that, although Part 3 is described on the easement, Part 4 is not.

James Tkachyk summarized that the size of the two lots is just over .84 ha in size and meets the requirements for only one rural residential lot under today's regulations. The Agent assumes the road is currently at a standard that the City would take over. It also appears that the owners are reluctant to pursue comments from the NWHU unless the City grants approval. These comments are important to the Committee in order to determine whether lot size meets the intention of the Official Plan and Zoning By-law.

Shane Pearce explained the cost for the owners to-date has been considerable and that an efficient use of resources should not mandate people to spend money when issues could be dealt with by way of granting a provisional consent. He maintained that tax payer money spend on signage for the private road deems it a public road

The Secretary-Treasurer explained that the merge in title was not an error under the Planning Act, as the merging of property is legislated because lots were created by referenc plan, not by consent or subdivision, but an error when it was registered on title. She further reminded that a decision on consent had to be made as well as a decision on the minor variance.

Ted Couch arrived at meeting at 3: 45 p.m.

Ted Couch noted that he would not be voting as he arrived late.

Wayne Gauld commented that the travelled portion of the access appears to be across the new lot and not the one identified as Winnipeg River Drive. He requested that this be clarified because if it is the new lot an easement would be required, which may affect a building envelop.

Wendy Cuthbert made a motion, which was seconded by Terry Tresoor, that the Application was not minor as it does not meet the intent of Sections 4.8.3 and 8.10.4 of the City of Kenora's Official Plan, because of the reduced lot size and frontage.

Moved by: Wendy Cuthbert Seconded by: Terry Tresoor

James Tkachyk closed the discussion to Committee members only and reminded members that the discussion would be for lot size and frontage only at this time.

James Tkachyk opened a discussion concerning the private road and the assumption that it was to city standard.

Wayne Gauld commented that he did not have a problem with lot size, but expressed concern over an easement on property to accommodate road access as the NWHU

might have an issue. He agreed that Winnipeg River Drive would most likely never become a municipal road.

The Chair called for the vote on the motion:

THAT Application A07/11 Tutura, for relief from the provisions of Section 4.5.3 (a) to reduce the required lot frontage for the new lot from 61 metres to 40.88 metres for a variance of 20.12 metres, and relief from Section 4.5.3 (b) to reduce the required lot size for the new lot from .8 ha to .452 ha for a variance of .347 ha. be refused as the proposed reduction in lot size for both lots and reduction in frontage for the new lot does not meet the intent of Section 4.83 and Section 8.10.4 of the City of Kenora's Official Plan and is not desirable and appropriate development per reasons provided in the staff planning report.

Carried

Shane Pearce and Applicant left the meeting at 3:55 p.m.

(v) Considerations of Applications for Land Division

1. B11/11 Tutura Application for Consent for a Lot Creation in conjunction with Application for a Minor Variance A07/11

The Secretary-Treasurer commented that since the consent application had been presented as part of the minor variance application, by Shane Pearce, Agent for Tutura, and the Committee has an Application for Consent before them the Committee should make a decision on the Application.

The Secretary-Treasurer reminded the Committee of the guidelines for approving consent applications per the Staff Planning Report.

Mr. Tkachyk asked the Committee for comment – none received.

Moved by: Wendy Cuthbert Seconded by: Terry Tresoor

That the Kenora Planning Advisory Committee refuses Application for Consent B11/11 Tutura for the creation of one RR lot from property described as 27 Winnipeg River Drive CON 7J PT LOT 1 RP KR152 PARTS 3 & 4 PCLS 24755 & 24087 as it does not meet the tests of Section 53(12)(b)(c) (f) (i), nor the intent of the City of Kenora Official Plan policies 4.3.2(a) or 8.10.4 (h) and (i), per the Staff Report.

Carried

(vi) Adjourn

Moved by: Terry Tresoor

THAT the August 25, 2011 Planning Advisory Committee meeting be adjourned at 4:03 p.m.

MINUTES ADOPTED AS PRESENTED THIS 20th DAY OF SEPTEMBER, 2011

CHAIR

SECRETARY-TREASURER